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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. BARRY DUGAR, Defendant and Appellant.	A148964 (Contra Costa County Super. Ct. No. 51520931)

Defendant Barry Dugar was convicted by a jury of multiple counts of annoying or molesting two minors. He argues the court should not have admitted expert testimony on Child Sexual Assault Accommodation Syndrome (CSAAS) and that he was denied effective assistance of counsel. We affirm.

BACKGROUND

Dugar was charged, as a prior sex offender, with 12 counts of annoying or molesting four minors Doe in violation of Penal Code section 647.6, subdivision (c)(2).[1] Enhancements were alleged for a prior strike conviction (§§ 667, subds. (d) and (e), 1170.12, subd. (b) and (c)) and a prior prison term (§ 667.5, subd. (b).) The jury found

[1] Penal Code section 647.6, subdivision (c)(2) provides: "Every person who violates this section after a previous felony conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5, or 289, any of which involved a minor under 16 years of age, or a previous felony conviction under this section, a conviction under Section 288, or a felony conviction under Section 311.4 involving a minor under 14 years of age shall be punished by imprisonment in the state prison for two, four, or six years." (Pen. Code, § 647.6, subd. (c)(2).)

Dugar not guilty of counts 1 through 3 (related to John Doe I), but convicted him of counts 4 through 6 (related to John Doe II) and counts 7 and 8 (related to John Doe III). The jury was unable to reach verdicts on count 9 through 12 (involving victims John Doe III and John Doe IV). The court declared a mistrial and granted the prosecutor's motion to dismiss these charges. In a bench trial, the court found true the prior strike and prison prior allegation. The court sentenced Dugar to a prison term of 14 years 4 months. Dugar now appeals.

General

The charges stemmed from Dugar's interactions with four minor boys when they were high school students. We will discuss only the evidence and proceedings relevant to admissibility of the CSAAS evidence and the adequacy of counsel's representation, the issues Dugar raises in this appeal.

Doe I's Testimony

In Summer 2015, Doe I was 17 years old and living in Kentucky with his mother. On his own, he made his way back to Richmond, where he previously lived, in order to finish high school and play football. However, he was soon homeless, and a friend referred him to Dugar who managed a transitional house. Before the start of the school year, Doe I and Dugar met and eventually reached an agreement allowing Doe I to live in the house until the end of the football season. Doe I stayed in a bedroom with four other boys, including Doe IV.

Dugar had several sex-related conversations with Doe I. Dugar asked Doe I if he would " 'suck a man's dick' " and said that he previously " 'had to suck dick' " while in jail. Asked about a time Dugar made him feel uncomfortable, Doe I testified about a car ride during which Dugar asked him if he would orally copulate a man for money. Doe I said on another car ride, Dugar offered him $400 to orally copulate him.

Asked whether Dugar ever touched him in a way that made him feel uncomfortable, Doe I stated "[N]ot really" but then described an incident in the house when Dugar "brushed against" Doe I's penis over his clothes with the back of his hand

while they passed each other in the stairway. Moments later, Dugar told Doe I he did not mean to touch him.

Doe I also described an incident where Dugar asked him to undress. On that occasion, Dugar asked Doe I if he was loyal and whether he would do anything for him. Doe I acknowledged he would, adding that Dugar housed, cooked, and provided for him. At that point, Dugar told him, " 'All right, strip right now.' "

At some point, Doe I had a two-hour discussion with his roommates about Dugar's behavior. The next day, Doe I spoke with Doe II, whom he considered a brother, about Dugar. Later on, while he was getting a ride home from one of his football coaches, Doe I was asked by the coach if he felt safe at Dugar's house. Doe I told his coach Dugar had done " 'some gay stuff' " but did not elaborate further. The next day, Doe I was called into the principal's office to discuss Dugar with his coach, the school principal, and a police officer. He described to them "little trippy stuff" that happened between him and Dugar. He shared one example where Dugar came into the living room while Doe I was watching television and remarked on the size of someone's penis.

Doe I said that he did not disclose Dugar's conduct sooner because he believed if he did, "they were going to take action on it" and he would "have no place to stay." He said it was difficult to come forward and tell people about what was going on in the house because he thought Dugar was a good man, and Doe I did not want to get him into trouble. He was also afraid of appellant's "power" and recognized Dugar as someone "known around Richmond" who "can get almost anything he wanted if he wanted it."

During cross-examination, Doe I acknowledged that when he was called into the principal's office to discuss Dugar, he never disclosed that Dugar asked him to strip. He was also asked if he ever thought to live with his family members who lived nearby, given his testimony that Dugar made him uncomfortable. In cross-examination, Doe I acknowledged that he continued to live at Dugar's house even after he thought Dugar brushed against his penis. Asked if he was physically scared of Dugar, Doe I testified he was not.

Doe II's Testimony

In Summer 2014, Doe II, then 14 years old, met Dugar at a local recreation center where he and his cousin Doe III were making music at the center's recording studio. Dugar walked into their recording session, told the boys he liked what they were doing, said he had contacts, and gave them his business card.

A couple of days later, when Dugar was at the high school, Doe II and Doe III spoke with him more about their music and possible contact with another local musician Dugar said he knew. Dugar arranged a meeting with the musician and drove the boys to Sacramento for the meeting. Dugar became their music manager.

Asked if there was anything Dugar did that made him feel uncomfortable, Doe II said Dugar said "weird stuff." On the trip to Sacramento, Dugar told him when he was in jail he would get "sucked up by people." About a month later, Dugar told Doe II about a "rich white man in the hills" who paid Dugar and his friends for oral sex. Dugar offered to take Doe II with him but Doe II refused. Nonetheless, Dugar persisted and asked Doe II five times if he wanted to earn money for sexual favors with other men. One time in the car, Dugar told Doe II to " 'whip it out' " in exchange for money.

In January 2015, Doe II and Doe III traveled with Dugar to Las Vegas for a music event. After the event, the three returned to the hotel where they were sharing a double room. The boys shared one bed and Dugar had the other bed. After Doe III fell asleep, Dugar began watching pornography on his phone, turned to the wall, and masturbated. Sitting on his own bed watching television, Doe II did not pay attention to Dugar but was able to see Dugar's stroking gestures and knew what Dugar was doing. Dugar then invited Doe II to have a masturbation contest with him.

At some point, Doe II talked with Doe I, who was like a brother to him, about Dugar. Doe II told him about Dugar's requests to get "sucked up." Later Doe II and the boys living in Dugar's house talked about their experiences with Dugar. After that, he was called to the principal's office at school and spoke to a police officer. Doe II did not report the conduct sooner because he did not want to be a "snitch."

During cross-examination, defense counsel asked Doe II about an account of his Las Vegas trip he gave to the police that did not come up during his direct examination. He was asked about not telling officers about the white person in the hills earlier, and he said he had mentioned the man to an officer.

Doe III's Testimony

In Summer 2014, when he was 15 years old Doe III met Dugar while he and his cousin Doe II were making music in the recording studio at the local recreation center. Dugar told them he liked their music, and they began discussing ways to market it. A week later, Doe III and Doe II spoke with Dugar about their music at the high school.

Asked whether there was a time Dugar made him feel uncomfortable, Doe III recalled the time he met up with Dugar to watch a high school football game. When Doe III expressed frustration with the progress of his music career to Dugar, Dugar told him he had " 'this thing' " that he was not able to discuss in public. The next time Doe III was in the car with Dugar, Dugar showed him a stack of cash. When Doe III asked him where he got the money, Dugar responded he got it "doing this thing [he] was going to ask . . . about." After being pressed for more information, Dugar eventually told Doe III he knew a man who could give them money if they "[did] stuff" for him. Dugar said all Doe III needed to do was " 'whip it out' " to get " 'like $50 right there.' " Dugar also told Doe III he had a previous relationship with a 17-year-old boy whom he was getting "sucked up" for money. He repeatedly told Doe III that if he really wanted to earn money, this was one of the ways.

Towards the end of Summer 2014, Doe III and Doe II drove with Dugar to Los Angeles for a music event. During the trip, Dugar told Doe III that Doe III's penis was "kind of big," and admitted that he looked at it at the hotel.

Around February 2015, during a break from running errands together while sitting in Dugar's car parked near a BART station, Dugar asked Doe III if he wanted to go to a man's house who would give him money for sexual favors. After Doe III declined, Dugar responded that it would make them closer and that he did it with " 'some of [his] boys all the time.' " Dugar then asked Doe III to show him his penis, stating he would

just give Doe III money and he could " 'just whip it out right here.' " After this incident, Doe III told Doe II what happened, and then Doe II shared his experiences with Dugar.

On cross-examination, Doe III confirmed that after the trip to Los Angeles in which Dugar commented on his penis, he went back to Los Angeles with Dugar on another trip. He acknowledged that he never told the police previously about the Los Angeles incident.

Doe IV's Testimony

In Summer 2015, when he was 17 years old and before his senior year in high school, Doe IV had been fighting with his mother and ran away from home. A friend called Dugar on Doe IV's behalf to ask if Doe IV could stay at his house, and Dugar agreed. After a weeklong provisional period, Doe IV was allowed to move in. He shared a bedroom with four to five other teenagers. A few other adults were also living in the house.

A couple of days after Doe IV moved in, Dugar told him that during a fight he grabbed an underage boy by the testicles and hit him in the penis for which he was convicted. Dugar also told Doe IV that he had sex with an underage couple.

Doe IV said he had a "weird conversation" with Dugar a few weeks into his stay. Dugar asked Doe IV if he ever "did anything with anybody . . . like any male," and if he would ever try. Three weeks later, Dugar asked if Doe IV had " 'thought about it.' " Dugar said he " 'could make it happen.' " About a month later, Dugar asked Doe IV if he had ever " 'been jacked off before' " by a male and if he would try it for money. Dugar told Doe IV that he had done it before, that it was not bad, and invited Doe IV to join him to try it out. Two or three weeks later, Dugar told Doe IV again they could go make some money. Dugar said he knew a guy and told him, " 'All you got to do is let them jack you off or just suck you for some money.' " Doe IV said Dugar asked him to masturbate someone or be masturbated by someone for money about five times. Approximately five or six times, Dugar asked him to engage in oral sex for money. When Doe IV declined the offers, Dugar discussed Doe IV's penis.

Doe IV recalled that Dugar gave him hugs and patted his butt on several occasions. He also recalled that Dugar once touched his thigh about eight inches away from Doe IV's penis. A couple of times during a hug, Dugar "tapped" Doe IV about an inch away from his penis. Once while Dugar congratulated and hugged Doe IV for his grades, Dugar patted Doe IV near his penis and said, " 'You sure?' "

At some point, Doe IV discussed Dugar with his roommates at the transitional house. One of the boys described similar interactions with Dugar. After that, Doe IV spoke with Dugar's son, Tony. He told Tony his father was asking him about "jacking off and doing that for money" and that he was "acting weird." He told Tony that he and the other boys felt "weird" living in the house Doe IV eventually spoke with police but was reluctant at first. He was scared of being a snitch, and noted snitches could get "beat up, killed. Anything could happen." Also, Dugar was "cool" because he let Doe IV stay with him and took care of him when he did not feel particularly loved at home. Doe IV respected Dugar for that, called Dugar " 'Uncle Barry,' " and felt Dugar respected him.

During cross-examination, Doe IV acknowledged that he lied to Dugar and told him that his mother was dead. He was questioned about his initial interview with officers in which he said Dugar had not said anything inappropriate or sexual to him while he lived in the house. He was pressed on the responses he gave to police when he was asked about how many times Dugar solicited him to do a sexual act for money or touched him improperly. He testified that he never pushed, hit, or yelled at Dugar when Dugar placed his hand near Doe IV's penis, nor did he leave the house to go live elsewhere.

Prosecution's Expert Testimony

Following an Evidence Code section 402 hearing requested by Dugar, Dr. Anthony Urquiza, a UC-Davis Medical Center Professor of Pediatrics and licensed psychologist, testified as an expert in child sexual abuse.

Dr. Urquiza explained that CSAAS originated as "an educational tool" for therapists treating sexually abused children to educate them about "common characteristics of a child who has been abused." It was also used to dispel misperceptions or myths therapists may have about child sexual abuse in order to improve treatment.

Some of these misperceptions include that children are sexually abused by strangers; that children are able to protect themselves from their abusers and will disclose their abuse "right away"; that children dislike their abusers, and, if they retract their claims after disclosing abuse, it means the abuse did not actually happen. Contrary to those misperceptions, Dr. Urquiza clarified that most children are sexually abused by somebody they know and with whom they have an ongoing relationship, "usually somebody who has . . . fairly continuous access to the victim." The child may even have a positive relationship with his abuser prior to the sexual abuse. Research also indicates there is "usually a significant delay of weeks, months or years" before an abused child initially discloses the abuse, and when the child finally does disclose, it is usually just the "tip of the iceberg."

Dr. Urquiza noted CSAAS describes five common characteristics of sexually abused children: secrecy, helplessness, entrapment and accommodation, delayed disclosure, and recantation. The abuse is a secret between the child and the abuser. The child may be afraid to tell anyone about the abuse or may have been told by the abuser to keep quiet. Helplessness refers to the child's inability to protect himself due to the imbalance of power between the child and his abuser. Due to that sense of helplessness, the child feels trapped and develops means of coping with abuse. Delayed disclosure reflects a child's delay in revealing the abuse due to threats from the abuser, shame and humiliation, or fear that disclosure will harm the child's family or even his abuser, whom the child may love. A child will retract allegations of abuse 20 to 25 percent of the time, usually in situations where the abuser has access to the child. Dr. Urquiza acknowledged that false allegations of sexual abuse happen, and approximately 1 to 8 percent of child sexual abuse allegations turn out to be false.

Dr. Urquiza stated CSAAS is not a diagnostic tool, meaning it is not used to determine whether a child has been abused or not or whether a specific person is a perpetrator. Simply because a child presents these characteristics does not mean he has been abused. Dr. Urquiza stated that CSAAS's "purpose is educational, not to make a

determination as to whether a particular person is abused or not or whether a particular person is a perpetrator or not. Its purpose is to educate people about sexual abuse."

Asked about his knowledge of this particular case, Dr. Urquiza responded, "I know the name of the defendant . . . . I know nothing else about this case."

Dugar's Testimony

Dugar testified on his own behalf. In 2015, Dugar was working as the founder of a nonprofit organization which provided housing for people with nowhere to go, including battered women, homeless, and former drug addicts in recovery. Doe I and Doe IV lived in a homeless and drug recovery home. Residents had to sign paperwork regarding certain rules for the house, including abstaining from drugs or alcohol, abiding by a curfew, helping with chores, and keeping up with schoolwork.

Dugar acknowledged that he was sexually attracted to teenage boys decades ago and addressed past sexual misconduct with minor boys, but he said with counseling and age he no longer has the same attraction. Dugar denied touching any of the four alleged victims in a sexual way, asking them to engage in sexual conduct for money, or requesting they expose themselves. He testified he was not sexual attracted to any of his four accusers.

Dugar testified that approximately two months into Doe I's stay, the two began having issues. Doe I complained about the rules, including curfew, and the two got into arguments. After one argument which upset Dugar, he told Doe I that he must not like living at the house, to which Doe I responded, " 'Well, you must like living in prison.' " When asked what he meant, Doe I responded, " 'You'll see.' " In late October, they got into a couple of more conflicts. One day, Dugar picked up the boys who were living at the house from a football game. All the boys timely came to the car but Doe I, who Dugar left behind. When Doe I told him on the phone to come back and get him, he added, " 'You going to have me say that you did something to me.' " The following week, the two had another argument because Doe I refused to eat the dinner Dugar cooked and insisted Dugar take him to a fast food restaurant, which Dugar refused to do. Doe I said an expletive, and Dugar reprimanded him. When Doe I dismissed Dugar's

efforts at discipline, Dugar told him he needed to find another place to live. On October 28, 2015, Dugar found a stash of marijuana Doe I kept in his closet as well as $200 in cash. He confiscated the drugs and money and went to the high school. When he saw Doe I, Dugar told him he found his weed and ordered him to leave the house. After speaking with someone else, he saw Doe I and Doe II in front of the principal's office on his way out of the school. That same day he was arrested.

Jury Instructions

One of the instructions given the jury was CALCRIM 1193. The court instructed: "You have heard testimony from Anthony Urquiza regarding Child Sexual Abuse Accommodation Syndrome. [¶] Anthony Urquiza's testimony about Child Sexual Abuse Accommodation Syndrome is not evidence that the defendant committed any of the crimes charged against him."

DISCUSSION

Expert Testimony

Dugar contends the trial court erred in admitting expert testimony on CSAAS and argues the testimony deprived him of his Fourteenth Amendment due process rights. He says the CSAAS testimony was improper, irrelevant expert opinion that usurped the jury's role in determining the credibility of witnesses.

Opinion testimony by an expert witness is admissible if it is "[r]elated to a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact." (Evid. Code, § 801, subd. (a).) We review the admission of expert testimony for an abuse of discretion. (*People v. Kovacich* (2011) 201 Cal.App.4th 863, 902.)

While inadmissible to prove that a molestation occurred, CSAAS evidence has been repeatedly held admissible in California for the limited purpose of dispelling misconceptions that lay jurors may have about how childhood victims typically react to sexual abuse. These cases include *People v. Mateo* (2016) 243 Cal.App.4th 1063, 1069; *People v. Perez* (2010) 182 Cal.App.4th 231, 245; *People v. Sandoval* (2008) 164 Cal.App.4th 994, 1001-1002; *In re S.C.* (2006) 138 Cal.App.4th 396, 418 (*S.C.*); *People*

v. Wells (2004) 118 Cal.App.4th 179, 188; *People v. Yovanov* (1999) 69 Cal.App.4th 392, 406-407; *People v. Morgan* (1997) 58 Cal.App.4th 1210, 1215-1216; *People v. Patino* (1994) 26 Cal.App.4th 1737, 1744-1745 (*Patino*); *People v. Housley* (1992) 6 Cal.App.4th 947, 955-956; and *People v. Gilbert* (1992) 5 Cal.App.4th 1372, 1383-1384.)

Indeed, our Supreme Court signaled its agreement with the cases allowing expert testimony on CSAAS to describe common reactions to sexual abuse. In *People v. McAlpin* (1991) 53 Cal.3d 1289 (*McAlpin*), the defendant challenged his conviction for lewd and lascivious conduct contending the trial court erred by permitting the prosecutor to introduce expert testimony about the reasons why a parent might not report known child molestation. (*Id.* at pp. 1298-1299.) In rejecting that argument, the Court noted its recognition in *People v. Bledsoe* (1984) 36 Cal.3d 236, that expert testimony on rape trauma syndrome, although inadmissible to prove the complaining witness had been raped, is admissible to rehabilitate the witness when the defense impeaches her by suggesting her post-incident conduct was inconsistent with having been raped. (*McAlpin*, *supra*, 53 Cal.3d at p. 1300.) " '[I]n such a context expert testimony on rape trauma syndrome would play a particularly useful role by disabusing the jury of some widely held misconceptions about rape and rape victims, so that it may evaluate the evidence free of the constraints of popular myths.' " (*Ibid.*) In the Court's view, "[a]n even more direct analogy" could be drawn to CSAAS evidence on "common stress reactions of children who have been sexually molested." (*Ibid.*) Thus, the Court concluded the trial court properly admitted the evidence. (*Id.* at pp. 1301-1302.)

In this case, we decline to depart from the weight of this authority. Here, the trial court reasonably found the CSAAS testimony was admissible. Defense counsel repeatedly attempted to impeach the victims while cross-examining them. Defense counsel questioned them on inconsistencies between their trial testimony and the statements they made to police officers in the course of the investigation; suggested that their conduct (e.g., staying at the house or taking road trips with Dugar) was not in line with having been sexually annoyed or molested; or indicated some ulterior motive for

their accusations against Dugar. Accordingly, the court reasonably concluded expert testimony on CSAAS could assist in explaining the victims' states of mind on these issues or could help disabuse the jury of misconceptions of how child sex abuse victims behave.

Moreover, Dr. Urquiza made clear that the purpose of CSAAS evidence was to educate people about sexual abuse and that it was not a diagnostic tool. He repeatedly stated that it was not to be used to determine whether a child was abused or whether a particular person was an abuser. He acknowledged that he had no information about the specifics of the case against Dugar, and had no knowledge of any of the alleged victims or their claims. The court underscored these points when it gave CALCRIM 1193, which instructed the jury that Dr. Urquiza's testimony was "not evidence that the defendant committed any of the crimes charged against him." There was no abuse of discretion in allowing the testimony.

Dugar contends CSAAS is irrelevant "junk science" that lacks general acceptance in the relevant scientific community. Dugar anchors his argument to a 1992 Pennsylvania Supreme Court case, *Commonwealth v. Dunkle* (1992) 529 Pa. 168 (*Dunkle*), which concluded that CSAAS evidence of uniform behavior of abused children was not sufficiently established to have gained general acceptance in its particular field. (*Id.* at pp. 184-186.) *Dunkle* provides no grounds for us to divert from California precedent. While decisions from sister-state courts are at most persuasive authority (*People v. Ross* (2008) 162 Cal.App.4th 1184, 1190), they have less influence in cases like this where the weight of California authority holds that CSAAS is admissible. Moreover, given that our Supreme Court in *McAlpin* implicitly rejected the argument that CSAAS is inadmissible, *Dunkle* does not persuade us that the trial court erred when it admitted CSAAS evidence in this case.

Beyond *Dunkle*, Dugar has not produced any authority that CSAAS evidence is no longer accepted in the relevant scientific community. Addressing Dugar's "junk science" claim at the Evidence Code section 402 hearing, the trial court stated, "[Y]ou've not provided any information that supports that theory. [¶] [Dr. Urquiza] has testified he's

aware of one article, the use of the term 'junk science,' and he admits there may be others but he doesn't know them. You provided no authority for the Court for that proposition." We agree with the court's assessment. Defense counsel asked Dr. Urquiza about a single article using the phrase "junk science" and other articles but elicited no testimony confirming CSAAS was discredited in the relevant scientific community. To the contrary, Dr. Urquiza rejected the notion that CSAAS has been discredited. Dr. Urquiza noted the research to support the fact that "nearly all of the field of child abuse feels like accommodation syndrome is a very important and influential article." Based on his extensive time in the field and his deep knowledge of literature on child abuse, he observed that "while not perfect, by far most of the research literature has strongly supported" CSAAS.

Dugar also contends the CSAAS evidence does not meet the requirement that it be beyond the common knowledge of the jury in order to be admissible as expert testimony. Dugar says that the proliferation in the media of various detailed accounts of numerous child sexual abuse cases in the 20 years since CSAAS was introduced has made the subjects addressed in the theory within the common knowledge of the typical juror. To support this argument, he relies on *Dunkle*, *supra*, 529 Pa. 168, which held that expert testimony concerning the typical behavior exhibited by sexually abused children was not admissible under Pennsylvania law to explain misconceptions about victim behavior because delays in reporting are "well within the range of common [juror] experience." (*Id.* at p. 182.) Again, *Dunkle* is contrary to more recent California precedent (see, e.g., *McAlpin*, *supra*, 53 Cal.3d at pp. 1300-1301), and we decline to follow.

Dugar further argues the admission of CSAAS evidence was so fundamentally unfair as to deprive him of his federal constitutional rights to due process and a fair trial. According to Dugar, Dr. Urquiza's testimony was inherently prejudicial because when a jury is confronted with two different versions of what happened in a sex abuse case an expert's testimony represents the only seemingly objective source and can bolster the charges made by the accusers. We reject the claim. A trial court violates a defendant's due process rights where it commits an error that renders a trial arbitrary and

fundamentally unfair. (See *Estelle v. McGuire* (1991) 502 U.S. 62, 67-75; *People v. Falsetta* (1999) 21 Cal.4th 903, 913 ["The admission of relevant evidence will not offend due process unless the evidence is so prejudicial as to render the defendant's trial fundamentally unfair."].) Defense counsel sought to undermine the credibility of Dugar's accusers, so Dr. Urquiza's testimony was relevant to the issue of victim credibility and was properly admitted for the limited purpose of disabusing a jury of misconceptions it might hold about how a child reacts to sexual abuse. (See *Patino*, *supra*, 26 Cal.App.4th at p. 1744.) Dr. Urquiza stated repeatedly that CSAAS was not a diagnostic tool to be used to determine whether a particular child has been abused or whether a specific person is an abuser. CALCRIM 1193 underscored this. Admission of the CSAAS evidence did not deprive Dugar of due process or render his trial unfair. Because we conclude there was no evidentiary error, we need not address harmless error.

Ineffective Assistance of Counsel

Dugar argues he received constitutionally deficient legal representation. He notes that "[u]nlike in nearly every published case discussing CSAAS testimony, the charged sexual conduct here was predominantly verbal in nature." He argues his trial attorney was ineffective for failing to object to the CSAAS evidence as "irrelevant in a case where no acts of physical molestation occurred."[2]

To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient under an objective standard of professional conduct and that it is reasonably probable that defendant would have achieved a more favorable result in the absence of his trial attorney's deficiency. (*Strickland v. Washington* (1984) 466 U.S. 668, 688.) "[A] court must indulge a 'strong presumption' that counsel's conduct falls within the range of reasonable professional assistance . . . ." (*Bell v. Cone* (2002) 535 U.S. 685, 702.) In evaluating such a claim, we "defer[ ] to

[2] Embedded in his ineffective assistance of counsel argument, Dugar states counsel should have also sought exclusion of the CSAAS evidence under Evidence Code section 352. We disregard this part of Dugar's argument which was presented without meaningful legal analysis or supporting authority.

counsel's reasonable tactical decisions, and there is a presumption counsel acted within the wide range of reasonable professional assistance." (*People v. Mai* (2013) 57 Cal.4th 986, 1009.) Because the presumption of counsel's competence typically can be rebutted only with evidence outside the record, claims of ineffective assistance made on direct appeal fail unless "(1) the record affirmatively discloses counsel had no rational tactical purpose for the challenged act or omission, (2) counsel was asked for a reason and failed to provide one, or (3) there simply could be no satisfactory explanation." (*Ibid*.) We independently review whether Dugar has demonstrated ineffective assistance of counsel. (*In re Alvernaz* (1992) 2 Cal.4th 924, 944-945.)

Dugar has not shown that his trial counsel's performance was deficient. He acknowledges his trial counsel "lodged several different challenges to the CSAAS evidence in order to get it excluded," but he cannot demonstrate his trial counsel was inadequate for not objecting to the CSAAS evidence on the grounds that the charged sexual misconduct was mostly verbal. The record establishes grounds for why an attorney would not invoke that reason for exclusion. Two of the Does testified that Dugar touched or patted them over their clothes on or near their penises. Dugar has also provided us no authority holding that CSAAS evidence is irrelevant in such circumstances. He acknowledges he "found no comparable, published cases discussing the admission of such testimony when the conduct was predominantly verbal in nature." This does not satisfy Dugar's burden to affirmatively show error with "meaningful legal analysis supported by citations to authority." (*S.C.*, *supra*, 138 Cal.App.4th at p. 408.) Nor does it establish the merits of his argument.[3]

[3] We doubt that CSAAS would be deemed irrelevant in cases where all the abuse or molestation charges stemmed from only verbal acts. Verbal offenses can be considered sexual abuse which CSAAS has traditionally been admitted to address. Penal Code section 11165.1 expressly defines "sexual abuse" to include conduct that violates Penal Code section 647.6. (See Pen. Code, § 11165.1, subd. (a).) A touching is not required under section 647.6. (See *Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 379.) In *In re D.G.* (2012) 208 Cal.App.4th 1562, the court concluded the defendant's repeated acts of offering his daughter's half-sister money and a car for oral sex was sexual abuse. (*Id.* at pp. 1571-1572.) It rejected the argument that conduct

DISPOSITION

The judgment is affirmed.

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which did not include some sort of offensive touching was not sexual abuse. (*Id.* at p. 1572.)

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Siggins, P.J.

WE CONCUR:

_____
Fujisaki, J.

_____
Wiseman, J.[*]

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[*] Retired Associate Justice of the Court of Appeal, Fifth Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.